

REMARKS

Rejection of Claims Under 35 U.S.C. § 112

The Examiner rejected Claim 4 under 35 U.S.C. § 112, second paragraph, as being indefinite. Applicant has amended Claim 4 to clarify the informality noted by the Examiner.

The Examiner also contends that "the flange member engaging a portion of the body defining the single hole" in Claim 4 is confusing. Applicant submits that the flange member may engage the entire circumference in an embodiment having a circular flange member, but only certain discrete portions of the body when the flange is gear shaped. It is further submitted that if the flange engages the entire circumference, it definitively engages "a portion." Applicant respectfully submits the claim as written is sufficiently definite and particularly points out and distinctly claims the subject matter referenced.

In view of the foregoing, the Examiner is urged to withdraw the rejection under 35 U.S.C. § 112, second paragraph.

Rejection of Claims 1 and 5-8 Under 35 U.S.C. § 102(b)

The Examiner has rejected Claims 1 and 5-8 under 35 U.S.C. § 102(b) as being anticipated by United States Patent No. 874,666, granted to Rodrigues-Ely ("Rodrigues-Ely"). It is axiomatic that in order for an invention to be refused pursuant to U.S.C. § 102(b) in view of an anticipating reference that all of the elements claimed in the instant application must appear in the cited reference. In this instance, Rodrigues-Ely does not disclose an angular bore intersecting a straight bore and terminating at an inlet end. As indicated in Figure 1 of Rodrigues-Ely, conduit "a" never intersects with either conduit "b", nor is there any mention in the description of this reference of an embodiment which does so, therefore, these conduits are not in fluid communication.

Furthermore, Rodrigues-Ely does not disclose "a tube concentric with a straight bore." It therefore goes without saying that tube and body member in the referenced patent do not define an annular channel around a tube. As the referenced Rodrigues-Ely patent does not disclose all of the elements claimed in Applicant's Claim 1, as a matter of law it cannot anticipate Claims 5 or 6 which depend from Claim 1, and thus include all of the structure and limitations contained therein.

With respect to Claims 7 and 8 (Claim 8 depending from Claim 7), Rodrigues-Ely does not disclose coupling members engaging an inlet end of either the angular bore or the straight bore. Nor does it disclose a tube coupled to any one of these coupling members substantially concentric with a straight bore. The Examiner's statements that "the fuel passage *a* inherently must have a coupling means for connecting a supply of fuel to the passage *a*" does not necessitate that the cited invention retains the particular coupling members claimed by Applicant, or a coupling member engaging both a tube and a bore. To rely on inherency, the Examiner is not permitted to engage in conjecture or supposition, the allegedly inherent feature must be essential such that the disclosed device could not exist without it. Here, the Examiner has not made the showing required for reliance on inherency. See *In re Robertson*, Fed. Cir. 98 - 1270 February 25, 1999.

In view of the foregoing, Applicant urges withdrawal of the rejection under 35 U.S.C. § 102(b).

Rejection of Claims 1, 4-8 and 10 Under 35 U.S.C. § 102(b)

The Examiner has also rejected Claims 1, 4-8 and 10 under 35 U.S.C. § 102(b), as being anticipated by United States Letters Patent No. 3,477,112, issued to Yerkins ("Yerkins"). Applicant respectfully traverses this rejection.

Applicant's invention, as claimed, is used in combination with a combustion engine. Moreover, the nozzle provides a nitrous oxide/fuel mixture. Yerkins discloses a torch tip for heating and cutting metals dispensing a heating jet and a pure oxygen jet. Nothing in Yerkins teaches or suggests that the disclosed torch tip is for use in combination with a combustion engine

or that it provides a nitrous oxide fuel mixture to a combustion cylinder. As such, Yerkins does not anticipate Applicant's Claim 1.

Since Yerkins does not anticipate Claim 1, it is incapable of anticipating Claims 4, 5 and 6, being dependent from Claim 1. Moreover, as to Claim 4, the Yerkins patent discloses no flange member nor other means for causing annular disbursement of fuel around a central outlet port. With respect to Claim 5, the Yerkins reference discloses no coupling members engaged in inlet end of the invention.

With respect to independent Claim 7, Yerkins does not disclose any coupling members engaging the inlet end of any "bore."

In view of the foregoing, Applicant requests the Examiner withdraw the rejection in view of the Yerkins reference.

Rejection Of Claim 2 Under 35 U.S.C. § 103(a)

The Examiner has rejected Claim 2 under 35 U.S.C. § 103(a) as being unpatentable over Rodrigues-Ely in view of U.S. Letters Patent No. 4,248,384 issued to Zwicker ("Zwicker"). With respect to this rejection, as the Applicant has previously described the Rodrigues-Ely torch identified in that invention does not anticipate Claim 1 in the application for the reasons given. As such, since Claim 2 is dependent upon Claim 1 and thereby incorporates all of its limitations and structure, The combination of the Rodrigues-Ely invention with the Zwicker patent does not anticipate or render obvious Applicant's invention. The only addition by the Zwicker patent, *i.e.* use of stainless steel construction (an attribute neither taught nor suggested by Rodrigues-Ely) does not cure the deficiencies of Rodrigues-Ely noted above as a reference.

Furthermore, Applicant contends that given the application of its invention to internal combustion engines, as indicated in its amended Claim 1, that the cutting torch tips disclosed by

Rodrigues-Ely and Zwicker are non-analogous art, neither teaching nor suggesting what Applicant claims.

Rejection Of Claim 3 and 9 Under 35 U.S.C. § 103(a)

The Examiner has rejected Applicant's Claims 3 and 9 under 35 U.S.C. § 103(a) as being unpatentable over Rodrigues-Ely in view of United States Letters Patent No. 3,866,839, issued to Magner ("Magner"). As Applicant has previously argued, Rodrigues-Ely does not anticipate Applicant's Claim 1, the claim from which Claim 3 depends. Moreover, the Examining Attorney points to no structure or elements present in the Magner reference disclosing "radially spaced outlet ports and a center bore of a size to receive and engage the tube such that fluid communication through the center bore around the tube is prevented." As demonstrated by the drawings of Magner, the outlet portion of this invention 122 is contained within a sleeve 16 mounted over a tip 40. As to the space or "bore" of this sleeve, any fluid flowing through the tip is automatically in communication with such space and flows through the interior bore of the sleeve in this invention. Thus, the sleeve element does not prevent communication through a central bore.

With respect to Claim 9, as Rodrigues-Ely lacks any coupling member or tubes coupled to a coupling member, let alone any substantially concentric with a straight bore, the Examiner's claim of obviousness in view of Rodrigues-Ely necessarily fails. Nor does Rodrigues-Ely teach or suggest any use of an extension assembly of the type disclosed by Magner.

Rejection Of Claims 4 and 10 Under 35 U.S.C. § 103(a)

The Examiner has also rejected Claims 4 and 10 under 35 U.S.C. § 103(a) as being unpatentable over Rodrigues-Ely in view of Yerkins. Again, Applicant reiterates that Rodrigues-Ely does not anticipate any claims recited in the instant application for the reasons discussed previously. Nor does Rodrigues-Ely teach or suggest use of the hub 44 disclosed in Figure 3 of Yerkins. As such, this assembly would not be compatible with the multi-portal outlet structure disclosed in Rodrigues-Ely. Moreover, as stated previously, the inventions in both Rodrigues-Ely

and Yerkins are drawn to torch tips and hence are non-analogous to Applicant's claimed invention and do not teach or suggest that invention. The Examiner is therefore urged to withdraw this rejection.

Rejection Of Claim 11 Under 35 U.S.C. § 103(a)

Lastly, the Examiner has rejected Claim 11 as being unpatentable over Rodrigues-Ely in view of United States Letters Patent No. 3,838,820 issued to Pearce ("Pearce"). Once again, Applicant reiterates its arguments with respect to Rodrigues-Ely, which does not anticipate any of the claims recited by Applicant in the instant application. Applicant also points out the incompatibility of Rodrigues-Ely, featuring multi-portal outlets, with the torch tip disclosed by Pearce effectively teaching away from the combination asserted. As such, the Examiner has not provided sufficient explanation as to how Rodrigues-Ely teaches its combination with the Pearce apparatus with its inner and outer copper tubes construction. Absent such some motivation, teaching or suggestion, the combination of reference cited by the Examiner necessarily fails to set forth a *prima facie* case of obviousness let alone to obviating Applicant's invention in a non-analogous field. Withdrawal of this rejection is respectfully requested.

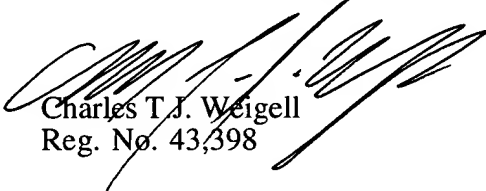
CONCLUSION

In view of the foregoing, Applicant believes by virtue of its arguments and amendments that all claims presented are in condition for allowance. Such action is requested at the earliest possible date. Applicant therefore requests favorable consideration by the Examiner and allowance of its claims at the Examiner's earliest opportunity.

Respectfully submitted,

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Date: March 31, 1999


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